

CONTRACT PERIOD THROUGH APRIL 30, 2020

TO:            All Departments

FROM:          Department of Materials Management

SUBJECT:      Contract for **COOLING LOOP SERVICES, COUNTY BUILDINGS**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by the Board of Supervisors on **April 19, 2000**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

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Wes Baysinger, Director  
Materials Management

SD/~~mas~~ **lc**  
Attach

Copy to:      Clerk of the Board  
                Monica Mendoza, Materials Management  
                Steve Varscak, Facilities Management

## COOLING LOOP SERVICES, COUNTY BUILDINGS

### 1.0 INTENT:

Maricopa County (hereafter referred to as the County) is actively pursuing the construction of several new facilities in their downtown informal campus area. As part of their design process, the County must consider various options for the provision of energy and energy-related services. As the County's facilities in this downtown area begin to take on the characteristics of a campus environment it is prudent to consider energy options that have proven successful in similar campus settings. One such option is the provision of chilled water through a "district cooling loop". Recently, it has become evident that a number of independent parties are quite interested in providing the County and other downtown cooling loads with a district system. The County recognizes the success of these systems in other metropolitan areas and would like to analyze this potential opportunity.

The Facilities Management Department (FMD) of the County therefore seeks specific proposals from interested providers that are capable of serving the County's downtown facilities via a downtown chilled water cooling loop. The County seeks these proposals to better evaluate a district cooling approach versus more traditional methods of addressing cooling requirements. It is the County's intention to compare the responses to this RFP against each other, and then against the estimated costs and benefits of owning and operating a County central plant. The County retains the option to provide these services internally or through some other means and is in no way obligated to award a contract to one of the bidding organizations. If it is deemed to be in the best interest of the County to proceed with a received proposal, a contract will be negotiated and executed between the selected proposer and the County.

The scope of this project shall include, but not necessarily be limited to, the turnkey provision of chilled water as required by the County and described in the technical specification (Section 2.0) of this RFP. Although the County is seeking bids that clearly define costs for the provision of commodity chilled water, it is also of importance to the County to understand qualitative differentiation issues that bidders may provide through their systems and services. These issues may include discussion of energy flexibility and contract flexibility, as well as any other less quantifiable features the bidder deems appropriate. These qualitative issues will be given due consideration and will be factored into the overall proposal evaluation scoring system.

To facilitate and simplify the County's evaluation of the proposals, and to ensure that each submittal receives the same orderly review, all proposals must follow the format described in §5.32.. Proposals shall contain all elements of the information requested. Exceptions must be noted in the manner described in §5.30..

### **THE COUNTY WILL NOT ALLOW THE USE OR LEASE OF ANY FACILITY OR LAND TO ANY PROPOSER FOR USE IN CONNECTION WITH THIS CONTRACT.**

### 2.0 TECHNICAL SPECIFICATIONS

#### 2.1 Facilities Served:

Maricopa County's downtown complex consists of a number of existing and planned facilities in an area bounded by Jefferson Street on the north, Jackson Street on the south, 1<sup>st</sup> Avenue on the east, and 8<sup>th</sup> Avenue on the west. The following individual facilities are to be considered in this RFP. Other facilities could be considered in the future, but will not be addressed in this RFP.

<b>New Downtown Facilities</b>	<b>Occupied* Sq. Ft.</b>	<b>Cooling* Peak (Tons)</b>	<b>Completion* Date</b>
New Downtown Jail	400,000	1,500**	1/2004
New Office Complex	<del>550,000</del> <b>710,000</b>	<del>1500</del> <b>2,000</b>	12/2003
New Records Retention	120,000	300	3/2001
New Forensic Sciences	40,000	115	11/2001
<b>Existing Buildings that may be Included in a Cooling Loop</b>			
<b>Security Building</b>	<b>230,000</b>	<del>700</del> <b>550</b>	<b>Existing</b>

Facilities Management	35,000	100	Existing
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- \* Estimates used for bid evaluation purposes only.
- \*\* Load could approximately double based on the potential to double-bunk prisoners

Exhibit 2 contains a site map of the area proposed.

## 2.2 ADMINISTRATIVE QUESTIONS:

The Proposer shall provide the following information pertaining to this project. This information must be provided by each discrete team member, including any project partners and all subcontractors, vendors, and/or investors with an equity stake in the project.

- 2.2.1 Firm name and business address, including telephone and fax number, and e-mail address.
- 2.2.2 Year established, including former firm name, if any.
- 2.2.3 Type of ownership, such as proprietorship, partnership, or corporation.
- 2.2.4 Provide state of incorporation or registration and related information on corporate ownership and parent company, if any.
- 2.2.5 Indication of whether firm is licensed to do business in the State of Arizona, and in the City of Phoenix.
- 2.2.6 Provide names of corporate management and project manager, including mailing address and telephone numbers. Also indicate the authorized negotiator who would be the person who is empowered to make binding commitments on behalf of the company and/or proposal team.

## 2.3 PROJECT APPROACH:

The Proposer shall discuss and clearly explain the technical, financial, and business approach that is suggested for undertaking this project. This section shall include general information of proposed contract terms and project performance. Please include the following detailed information:

- 2.3.1 The method for pricing delivery of chilled water to Maricopa County. Please describe qualitatively the proposed pricing structure including cost-per-unit [ton-hr] of cooling capacity, demand charges, monthly service fees, variable fees, start-up fees, etc.
- 2.3.2 Pricing – Commodity Charges:  
For each facility listed in the table in §2.1, indicate on attachment A the cost-per-ton-hour proposed for cooling services.
- 2.3.3 Pricing – Demand Charges  
For each facility listed in the table in §2.1, indicate on attachment A the monthly cost-per-peak-ton proposed for cooling services.
- 2.3.4 Pricing – Ancillary Fees  
For each facility listed in the table in §2.1, indicate on attachment A ancillary fees such as monthly or annual service fees, or any other fees occurring during the life of the contract.
- 2.3.5 Pricing – Initial Costs  
For each facility listed in the table in §2.1, indicate on attachment A initial costs or services that would be expended by Maricopa County in implementing the proposed project. These include infrastructure and property costs, and other anticipated direct expenses, which would be required of Maricopa County in the execution of this project. Do not estimate contract negotiation, legal, or management costs. Examples might include rights-of-way, County personnel support, or permitting expenses that the Proposer will expect the County to provide.



- 2.3.6 How will future energy price and supply risks be managed by the proposer?  
What demonstrable experience does the proposer have in hedging energy costs? Will a variety of energy sources be utilized in the production of chilled water to guard against price volatility?
- 2.3.7 Identify guarantees and remedies regarding the potential disruption of chilled water delivery:  
Please describe contingencies for meeting the County's cooling requirements should the primary source or distribution system of chilled water be disrupted for any reason.
- 2.3.8 Identify and describe any other proposed benefits to Maricopa County that will result from the Proposer's involvement in this project. These may include other quantifiable savings not otherwise listed above or perceived benefits of a more qualitative nature.
- 2.3.9 How does the Proposer intend to finance the project?:  
If debt financing is anticipated, provide information on debt/equity structure, lender(s), and experience with project financing. If other approaches, such as leases (including leveraged leases), bonds or grants are to be used, describe the precise nature and arrangement of the transaction. Identify and describe all significant sources of funds that will be used to construct the project. The Proposer shall expect to provide a Letter of Commitment from all financial parties prior to final authorization of a contract with Maricopa County.
- 2.3.10 Contract terms:
- 2.3.10.1 Preferred payment arrangement (for example, fixed price, floating price related to electric rates, take or pay minimums, price floors or caps).
- 2.3.10.2 Proposed approaches for dealing with load variations. How does the Proposer suggest dealing with annual variations in cooling loads due to weather or change of facility use? How will this affect the fixed and variable pricing for services?
- 2.3.10.3 Will there be provisions for adding or reducing capacity based upon modified load characteristics due to building use changes in the future?
- 2.3.10.4 How does the Proposer suggest allowing for flexibility in the contract through re-openers or indexed/competitive rate provisions.
- 2.3.10.5 In the event of a performance default by the Proposer, will the County be allowed to operate or modify the system to provide necessary cooling for County buildings?
- 2.3.10.6 What methods are proposed for independent validation of metering and billing? How are errors to be remedied? Note that the County will require hourly chilled water consumption data for each building for each month of the year.
- 2.3.10.7 What performance or reliability guarantees is the Proposer willing to provide?
- 2.3.10.8 **Escalation/De-Escalation. How do you propose to adjust prices?**
- 2.3.11 Technical Description of Project:  
Provide a detailed explanation and description of the operating strategy and design specifications for the project. Please include the following:
- 2.3.11.1 The proposer shall provide a Process and Instrumentation Diagram (PID) indicating the capacity and type of all prime movers and major components, temperature and flows, primary control points, and energy balances. Specifically indicate the following:
- (A) Proposed delivery temperature of the chilled water.
  - (B) Maximum and minimum flow rates.
  - (C) Method for varying capacity of the system.
  - (D) Sizes and energy sources for the chillers.
  - (E) Hardware and controls to be used for system capacity control.
  - (F) Sizes and type of cooling towers.

2.3.11.2 Energy supply requirements, such as electrical voltage and distribution power needs. If equipment voltages greater than 12 kV are anticipated, describe the equipment and systems for transformation and distribution of electrical power. Single-line diagrams may be provided to assist in describing the systems. Describe provisions for reliability of electrical supply.

2.3.11.3 Provide a guaranteed project operational delivery date including a time line indicating significant project activities. This project schedule should include fundamental information on major project development activities, such as design, permitting, material and equipment delivery lead times, installation, start-up, and commissioning.

#### 2.4 RELATED EXPERIENCES AND REFERENCES:

2.4.1 The Proposer shall provide a summary of their background and experience in providing district cooling systems similar to this project. Include projects for which the proposer has acted as a prime or general contractor, developer, or financier, or has a major role in such projects. Include information on the project's customers, location, size, operational characteristics, contract size, and years of operation. This project description should also clearly identify the Proposer's role in the project and its affiliation with other principals in completing it.

2.4.2 Provide a description of those special projects, awards, or opportunities which make the proposer especially experienced for this type of project.

2.4.3 Describe and quantify the firm's success rate for completing projects on time and within budget. For each project cited, include information on the planned construction start and end dates, and the actual date of completion.

2.4.4 The Proposer shall specifically state the ability to complete this project within the time frame described in Technical Description (§2.3.11.3). Please provide a listing of other projects currently underway and potential conflicts that may arise as a result of current and future committed workload.

2.4.5 Provide customer references as described in §5.15. Place in proposal as indicated in §5.32.10 using attachment C.

### 3.0 **SPECIAL TERMS & CONDITIONS:**

#### 3.1 TERMS AND PAYMENT:

Payment under contract will be made in the manner provided by law. Invoices shall be prepared and submitted in accordance with the instructions provided on the Purchase Order. Invoices shall contain the following information: Purchase Order number, item numbers, description of supplies and or/services, sizes, quantities, unit prices and extended totals and applicable sales/use tax. The County is not subject to excise tax.

#### 3.2 USAGE REPORT:

The Contractor shall furnish the County a monthly usage report delineating the acquisition activity governed by the Contract. The format of the report shall be approved by the County and shall disclose the quantity and dollar value of each contract item by individual unit. In addition to total monthly consumption and cost figures, hourly chilled water consumption data for each building shall be provided in electronic format via electronic mail or other means.

#### 3.3 ACCEPTANCE

Upon successful completion of the test performance period, the system shall be deemed accepted and the contract period will begin. All documentation shall be completed prior to final acceptance.

**Compensation to either party occurring from a project schedule delay (delayed construction completion on the part of the County, or delayed loop completion on the part of the proposer) shall be negotiated and developed after**

**selection of a proposal, and prior to final contract approval. The County recognizes the need to begin the sale of predictable commodity amounts, within predictable timeframes, on the part of the proposer.**

3.4 ~~TECHNICAL AND DESCRIPTIVE LITERATURE:~~

~~Proposer(s) must include complete manufacturer's technical and descriptive literature regarding the material they propose to provide. Literature shall be sufficient in detail in order to allow full and fair evaluation of the offer submitted. Failure to include this information may result in the bid being rejected.~~

4.0 **CONTRACT TERMS & CONDITIONS:**

4.1 LANGUAGE FOR REQUIREMENTS CONTRACTS:

Contractors signify their understanding and agreement by signing this document, that the Contract resulting from this proposal will be a requirements contract. However, this Contract does not guarantee that any purchases will be made. It only indicates that if purchases are made for the services contained in this Contract, that they will be purchased from the Contractor awarded that item. Orders will only be placed when a need is identified by a Using Agency or Department and proper authorization and documentation have been approved.

4.2 CONTRACT LENGTH:

This Request for Proposals is for awarding a firm fixed price contract to cover a ~~FIFTEEN (15)~~ **TWENTY (20)** year period.

4.3 OPTION TO EXTEND:

The County may, at their option and with the approval of the Contractor, extend the period of this agreement up to a maximum of TWO (2), FIVE (5) year options. The Contractor shall be notified in writing by the Materials Management Department of the County's intention to extend the contract period at least thirty (30) calendar days prior to the expiration of the original contract period.

4.4 ESCALATION OR DE-ESCALATION:

Any requests for price adjustments must be submitted thirty (30) days prior to the ~~Contract~~ **annual** renewal date. Justification for the requested adjustment in cost of labor and/or materials must be accompanied by appropriate documentation. ~~Escalation shall not exceed the increase in the U.S. Department of Labor (Bureau of Labor Statistics) Consumer Price Index for Urban Consumers.~~ Increases shall be approved in writing by the Materials Management Department prior to any adjusted invoicing submitted for payment.

4.5 UNCONDITIONAL TERMINATION FOR CONVENIENCE:

Maricopa County may terminate the resultant Contract for convenience by providing sixty (60) calendar days advance notice to the Contractor.

4.6 DEFAULT:

The County may suspend, terminate, or modify this contract immediately upon written notice to the Contractor in the event of a nonperformance of stated objectives or other material breach of contractual obligations; or upon the happening of any event which would jeopardize the ability of the Contractor to perform any of its contractual obligations. Maricopa County reserves the right to have service provided by other than the Contractor if the Contractor is unable or fails to provide requested service within the specified time frame.

4.7 TERMINATION BY THE COUNTY:

If the Contractor should be adjudged bankrupt or should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, the County may terminate this Agreement. If the Contract should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to provide enough properly skilled workers or proper materials, or persistently disregard laws and ordinances, or not proceed with work or otherwise be guilty of, a substantial violation of any provision of this Agreement, then the County may terminate this Agreement. Prior to termination of this



Agreement, the County shall give the Contractor fifteen (15) calendar days written notice. Upon receipt of such termination notice, the Contractor shall be allowed fifteen (15) calendar days to cure such deficiencies.

**4.8 APPROPRIATION CONTINGENCY:**

The Contractor recognized that any agreement entered into shall commence upon the day first provided and continued in full force and effect until termination in accordance with its provisions. The Contractor and the County herein recognized that the continuation of any contract after the close of any given fiscal year of the County which fiscal years end on June 30 of each year, shall be subject to the approval of the budget of the County providing for or covering such contract item as an expenditure therein. The County does not represent that said budget item will be actually adopted, said determination being the determination of the County Board of Supervisors at the time of the adoption of the budget.

**4.9 ORGANIZATION - EMPLOYMENT DISCLAIMER:**

The Contract is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in the Contract.

The parties agree that no persons supplied by the Contractor(s) in the performance of obligations under the agreement are considered to be County employees, and that no rights of County civil service, retirement or personnel rules accrue to such persons. The Contractor(s) shall have total responsibility for all salaries, wages, bonuses, retirement withholdings, workmen's compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and shall save and hold the County harmless with respect thereto.

**4.10 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:**

Notice is given that pursuant to A.R.S. § 38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S. § 38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the contract.

**4.11 INDEMNIFICATION AND INSURANCE:**

**4.11.1 INDEMNIFICATION**

To the fullest extent permitted by law, the CONTRACTOR shall defend, indemnify, and hold harmless the COUNTY, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the acts, errors, omissions or mistakes relating to the performance of this Contract. CONTRACTOR'S duty to defend, indemnify and hold harmless the COUNTY, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, caused by any acts, errors, omissions or mistakes in the performance of this Contract including any person for whose acts, errors, omissions or mistakes, the CONTRACTOR may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

Abrogation of Arizona Revised Statutes Section 34-226:

In the event that A.R.S. § 34-226 shall be repealed or held unconstitutional or otherwise invalid by a court of competent jurisdiction, then to the fullest extent permitted by law, the CONTRACTOR shall defend, indemnify and hold harmless the COUNTY, its agents, representatives, officers, directors, officials and employees from and

against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or resulting from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, indemnify and hold harmless, and the COUNTY, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, injury to, impairment or destruction of property including loss of use resulting therefrom, caused in whole or in part by any act or omission of the CONTRACTOR, anyone CONTRACTOR directly or indirectly employs or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the COUNTY.

The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of the COUNTY.

#### **4.11.2 INSURANCE REQUIREMENTS**

CONTRACTOR, at CONTRACTOR'S own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed companies in the State of Arizona with policies and forms satisfactory to the COUNTY.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of the COUNTY, constitute a material breach of this Contract.

The CONTRACTOR'S insurance shall be primary insurance as respects the COUNTY, and any insurance or self-insurance maintained by the COUNTY shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the COUNTY.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the COUNTY under such policies. The CONTRACTOR shall be solely responsible for the deductible and/or self-insured retention and the COUNTY, at its option, may require the CONTRACTOR to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

The COUNTY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The COUNTY shall not be obligated, however, to review such policies and/or endorsements or to advise CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONTRACTOR from, or be deemed a waiver of the COUNTY'S right to insist on strict fulfillment of CONTRACTOR'S obligations under this Contract.

The insurance policies required by this Contract, except Workers' Compensation, shall name the COUNTY, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

The policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against the COUNTY, its agents, representatives, officers, directors, officials and employees.

**4.11.3 Commercial General Liability.** CONTRACTOR shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00 00 01 1093 or any replacements thereof. The coverage shall include X, C, U.

The policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form , CG 20 10 11 85, and shall include coverage for CONTRACTOR'S operations and products and completed operations.

If the CONTRACTOR subcontracts any part of the work, services or operations awarded to the CONTRACTOR, he shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner's and CONTRACTOR'S Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the CONTRACTOR'S work, service or operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the CONTRACTOR'S Commercial General Liability insurance.

4.11.4 Automobile Liability. CONTRACTOR shall maintain Automobile Liability insurance with an individual single limit for bodily injury and property damage of no less than \$1,000,000, each occurrence, with respect to CONTRACTOR'S vehicles (whether owned, hired, non-owned), assigned to or used in the performance of this Contract.

4.11.5 Workers' Compensation. The CONTRACTOR shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONTRACTOR'S employees engaged in the performance of the work or services, as well as Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, the CONTRACTOR will require the Subcontractor to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of the CONTRACTOR.

#### 4.12 CERTIFICATES OF INSURANCE

Prior to commencing work or services under this Contract, CONTRACTOR shall furnish the COUNTY with Certificates of Insurance, or formal endorsements as required by the Contract, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this contract number and title.

In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the CONTRACTOR'S work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the COUNTY fifteen (15) days prior to the expiration date.

#### 4.13 CANCELLATION AND EXPIRATION NOTICE:

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the **COUNTY**.

#### 4.14 PERFORMANCE BOND:

The successful Contractor will be required to furnish a performance bond in the amount of \$5,000,000.00 within 10 days from receipt of notification of award. Date of U.S. postmark will be accepted as date of delivery of performance bond. Contractors are requested to tender this bond on a Document approved by the Arizona Department of Insurance. One Contractor failing to supply a performance bond as required will forfeit his right to the contract. A cashier's check, certified commercial check, irrevocable letter of credit or certificate of deposit, will be accepted in lieu of bond. **Performance bonds are to be identified with bid serial number, title and return address.**

#### 4.15 OFFSET FOR DAMAGES:

In addition to all other remedies at Law or Equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this Contract.

**4.16 ADDITIONS/DELETIONS OF SERVICE:**

The County reserves the right to add and/or delete services to this Contract. Should a service requirement be deleted, payment to the Contractor will be reduced proportionally, to the amount of service reduced in accordance with the bid price. Should additional services be required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

**4.17 ASSIGNMENT OR SUBCONTRACTING:**

Neither this Agreement, nor any portion thereof, may be assigned by Contractor without the written consent of the County first having been obtained. Any attempt by the Contractor to assign or subcontract any performance of this Contract without the written consent of the County shall be null and void and shall constitute a breach of this Contract.

The Subcontractor's rate for the job shall not exceed that of the Prime Contractor's rate, as bid in the pricing section, unless the Prime Contractor is willing to absorb any higher rates. The Subcontractor's invoice shall be invoiced directly to the Prime Contractor, who in turn shall pass-through the costs to the County, without mark-up. A copy of the Subcontractor's invoice must accompany the Prime Contractor's invoice.

**4.18 AMENDMENTS:**

All amendments to this Contract must be in writing and signed by both parties.

**4.19 CONFORMATION WITH THE LAW:**

This service shall be accomplished in conformity with the laws, ordinances, rules, regulations and zoning restrictions of the United States of America, the State of Arizona, County of Maricopa, and the City of Phoenix.

**4.20 CONTRACT COMPLIANCE MONITORING:**

The Materials Management Department and Facilities Management Department shall monitor the Contractors compliance with, and performance under, the terms and conditions of the Contract. The Contractor shall make available for inspection and/or copying by the County all records and accounts relating to the work performed or the services provided in this Contract.

**4.21 RETENTION OF RECORDS:**

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The Department, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of any and all said materials.

**4.22 ADEQUACY OF RECORDS:**

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that allowable services were provided to eligible clients the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

**4.23 AUDIT DISALLOWANCES:**

If at any time it is determined by the Department that a cost for which payment has been made is a disallowed cost, the Department shall notify the Contractor in writing of the disallowance and the required course of action ,which shall be at the option of the Department either to adjust any future claim submitted by the Contractor by

the amount of the disallowance or to require repayment of the disallowed amount by the Contractor forthwith issuing a check payable to Maricopa County.

**4.24 P.O. CANCELLATION LANGUAGE:**

The Department of Materials Management reserves the right to cancel Purchase Orders within a reasonable period of time after issuance. Should a Purchase Order be canceled, the County agrees to reimburse the Contractor but only for actual and documentable costs incurred by the Contractor due to and after issuance of the Purchase Order. The County will not reimburse the Contractor for any costs incurred after receipt of County notice of cancellation, or for lost profits, shipment of product prior to issuance of Purchase Order, etc. Contractors agree to accept verbal notification of cancellation from the Department of Materials Management with written notification to follow. By submitting a proposal in response to this solicitation, the Contractor specifically acknowledges to be bound by this cancellation policy.

**4.25 RIGHTS IN DATA:**

The County shall have the use of data and reports resulting from this Contract without additional cost or other restriction except as may be established by law or applicable regulation. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

**4.26 SECURITY AND PRIVACY:**

The Contractor agrees that none of its officers or employees shall use or reveal any research or statistical information furnished by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained. Copies of such information shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings, unless ordered by a court of competent jurisdiction. The County shall be notified immediately upon receipt of any such order of court, pertaining to production of such information.

The Contractor shall incorporate the foregoing provisions of this paragraph in all of its authorized Subcontracts.

**4.27 SEVERABILITY:**

Any provision of this Contract which is determined to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof, and remaining provisions shall remain in full force and effect.

**4.28 VALIDITY:**

The invalidity, in whole or in part, of any provision of this Agreement shall not void or affect the validity of any other provision of this Contract.

**4.29 CONTRACTOR RESPONSIBILITY:**

The Contractor will be responsible for any damages whatsoever to County property as applicable when such property is the responsibility or in the custody of the Contractor, his Employees or Subcontractors.

Contractor agrees that all Subcontractors performing work under this Contract shall comply with its provisions and it is expressly understood that all persons employed by the Contractor, either directly or indirectly, shall be considered employees of the Contractor, and not employees of Maricopa County.

Contractor acknowledges and agrees that it is liable and responsible for any act or omission by the Contractor, its employees, agents, officers, representatives, and subcontractors occurring in the course of Contractor's performance of this Contract, whether such act or omission occurs on County property or elsewhere. Contractor shall be liable for any loss or damage arising out of or related to Contractor's performance of this contract, Contractor shall bear the above stated liability, even in absence of its own negligence, unless County actions caused the loss or damage (i.e., if regulation, but damage occurs, Contractor is responsible for such damages.) Contractor shall bear the above stated liability, consequential, incidental, direct, and indirect damages, and shall be liable for all costs, including attorney's fees, incurred by the County to enforce this provision.

4.30 FAILURE TO PROVIDE SERVICES:

Maricopa County reserves the right to have service provided by other than the Contractor if the Contractor is unable or fails to provide requested service within the specified time frame.

4.31 DELIVERY:

It shall be the Contractor's responsibility to meet the County's delivery requirements, as called for in the Technical Specifications. Maricopa County reserves the right to obtain material on the open market in the event the Contractor fails to make delivery and any price differential will be charged against the Contractor.

4.32 PRICE REDUCTIONS:

By submitting a bid or proposal in response to this solicitation, Contractors agree to guarantee that Maricopa County is receiving the lowest price offered by your company to other customers **added to this loop or generating plant.** ~~for similar services at comparable volumes in a similar geographic area.~~ If at any time during the contract period your company offers a lower price to another customer, notification not be made of price reductions, upon discovery Maricopa County shall reserve the right to take any or all of the following actions:

4.32.1 Cancel the Contract, if it is currently in effect.

4.32.2 Determine the amount which the County was overcharged and submit a request for payment from the Contractor for that amount.

4.32.3 Take the necessary steps to collect any performance surety provided on the applicable contract.

4.33 CHANGES:

The County may require changes in the scope of the services to be performed by the Contractor hereunder. All such changes, which are mutually agreed upon by and between all the parties, shall be incorporated in written amendments to this Contract. All such amendments shall state any increase or decrease in the amount of the compensation due to the Contractor for the change in scope.

4.34 EMPLOYEE RESPONSIBILITY:

No responsibility will attach to a county employee for the premature opening of a proposal not properly addressed and identified in accordance with the proposal documents.

**NORTHWIND PHOENIX, LLC, 400 E VAN BUREN ST SUITE 750, PHOENIX, AZ, 85004**

PRICING: **B0604562**

WILLING TO ACCEPT FUTURE SOLICITATIONS VIA EMAIL: YES

INTERNET ORDERING CAPABILITY: NO

OTHER GOV'T. AGENCIES MAY USE THIS CONTRACT: NO

		Commodity Charges:	Demand Charges:	Ancillary Fees:	Initial Project Costs (if any):
6.1	<u>NEW DOWNTOWN JAIL</u>	\$ <u>.085</u> /per ton-hr.	\$ <u>15.83*</u> /per peak ton	\$ <u>0</u>	\$ <u>0</u>
6.2	<u>NEW OFFICE COMPLEX</u>	\$ <u>.085</u> /per ton-hr.	\$ <u>15.83*</u> /per peak ton	\$ <u>0</u>	\$ <u>0</u>
6.3	<u>NEW RECORDS RETENTION</u>	\$ <u>.085</u> /per ton-hr.	\$ <u>15.83*</u> /per peak ton	\$ <u>0</u>	\$ <u>0</u>
6.4	<u>NEW FORENSIC SERVICES</u>	\$ <u>.085</u> /per ton-hr.	\$ <u>15.83*</u> /per peak ton	\$ <u>0</u>	\$ <u>0</u>
6.5	<u>FACILITIES MANAGEMENT</u>	\$ <u>.085</u> /per ton-hr.	\$ <u>15.83*</u> /per peak ton	\$ <u>0</u>	\$ <u>0</u>

\*Per Month

COMPANY WEB SITE: ww.apses.com

COMPANY CONTACT (REP): Jim Lodge, Vice President & General Manager

E-MAIL ADDRESS (REP): Jim\_lodge@apses.com

Terms: Net 10 days

Federal Tax ID Number: 86-0978745

Vendor Number: 860978745

Telephone Number: (602) 744-5503

Fax Number: (602) 744-5236

Contract Period: To cover the period ending April 30, 2020.